ACME CANNING SDN. BHD.

v.

TAN HOCK SUNG

HIGH COURT MALAYA, PENANG
WAN ADNAN J
[CIVIL APPEAL NO. 11-30-86]
19 JUNE 1989

LAND LAW: *Housing Developers - Housing Developers (Control and Licensing) Rules 1970 - Whether 18 months for delivery to be calculated from date of pro forma or date of the sale and purchase agreement.*

The plaintiff sued the defendant, a developer, for damages for late delivery of a house. The plaintiff contended that the date of the signing of the contract within the meaning of r. 12(i)(o) Housing Developers (Control and Licensing) Rules 1970 ("the Rules") should be calculated from 25 August 1981 the date of the proforma and not from 16 August 1982 the date of the subsequent sale and purchase agreement. The plaintiff applied for summary judgment in the Magistrate's Court based on the date of the contract of sale, being 25 August 1981. The defendant contended that the plaintiff was not entitled to judgment, as the date of the contract for sale was 16 August 1982. The Magistrate allowed judgment. The defendant appealed.

Held:

[1] The pro forma agreement was a firm contract, as such the contract of sale and purchase came into being on 25 August 1981.

[2] Clause 12 of the agreement provided that delivery of vacant possession should be made within 18 months from 16 August 1982. Since this clause contravened r. 12 of the Housing Developers (Control & Licensing) Rules 1970 the clause is void to that extent.

[3] The sale and purchase agreement did not extinguish the pro forma contract. This agreement did not create a new contract of sale. The agreement only provided further rights and obligations of the parties.

[4] The plaintiff's claim was rightly brought. There are no triable issues.

[Appeal Dismissed.]

Case referred to:
Daiman Development Sdn. Bhd. v. Matthew Lui Chin & Anor. [1978] 2 MLJ 239

Legislation referred to:
Housing Developers (Control and Licensing) Rules 1970, r. 12(1)(o)
Subordinate Courts Rules 1980, O. 26A

For the applicant - Gan Teik Chee; M/s. Gan Teik & Co.
For the respondent - Ooi Teik Hoe; M/s. Ooi Lee & Co.

JUDGMENT

Wan Adnan J:

This is an appeal against the decision of the Magistrate's Court Bukit Mertajam.

The facts are not disputed.

On 25 August 1981 the respondent paid to the appellant a sum of RM6,200 being payment of 10% of purchase price of the property described on the pro forma which was signed by the respondent and also the appellant as the developers of the property. On 16 August 1982 the parties entered into a formal and proper sale and purchase agreement in respect of the said property (the agreement). Under Clause 12 of the agreement it was provided that delivery of vacant possession was to be within 18 months from the date of the agreement. The sale was subject to the Housing Developers (Control and Licensing) Rules 1970 (the Rules).

It was the contention of the appellant that effect must be given to Clause 12 of the agreement and therefore the 18 months period must be calculated from 16 August 1982. The respondent however contended that the period should run from 25 August 1981, the date the pro forma was signed.

In *Daiman Development Sdn. Bhd. v. Matthew Lui Chin Teck & Anor.* [1978] 2 MLJ 239 the Federal Court had that the pro forma agreement was a firm contract. Therefore in the present case there was a contract of sale created between the respondent and the appellant on 25 August 1981 when the respondent paid RM6,200 and signed the pro forma.

Rule 12(1)(o) of the Rules states:

> 12(1) Every contract of sale shall be in writing and shall contain within its terms and conditions provisions to the following effect, namely:
>
> (a) ...
>
> (o) Provisions specifying the date of delivery of the vacant possession of the housing accommodation to the purchaser which date shall not be later than 18 months after the date of signing of the contract of sale.

In my view since the contract of sale came into being on 25 August 1981 it is the requirement of the Rule that delivery of vacant possession must be within 18 months of that date. Clause 12 of the agreement to be in compliance with the Rule should have provided that delivery was to be within 18 months from 25 August 1981. Since the clause contravened the Rule the clause is void to that extent. By the signing of the agreement by the parties the contract of sale created by the pro forma agreement was not extinguished. The agreement did not create a new contract of sale. Only additional provisions were provided to specify the further rights and obligations of the parties.

Since the delivery of vacant possession to the respondent was later than 18 months from 25 August 1981, the respondent was entitled to claim for damages. The learned Magistrate was correct in giving judgment in favour of the respondent on application under O. 26A of the Subordinate Court Rules 1980. There was no triable issue.

I therefore dismissed the appeal with costs.

Also found at [1989] 2 CLJ 1190